

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:06CV69-03-MU

MARION EDWARD PEARSON, JR.,)
)
Petitioner,)
)
v.)
)
RANDALL LEE, Admin., Caledonia)
Correctional Inst.,)
)
Respondent.)
)

ORDER

THIS MATTER comes before the Court upon Petitioner's "Motion for Sanctions" (Document No. 27), filed July 5, 2006 and Petitioner's "Motion to Strike" (Document No. 22.)

Petitioner filed a § 2254 Petition in this Court on February 28, 2006. Petitioner now requests that this Court “order sanctions pursuant to Rule 11(b) on the grounds that Respondent’s answers to Petitioner’s claims five, six and seven were submitted merely to cause unnecessary delay; is not a legal defense to those claims; and has failed to make nonfrivolous argument for the extension, modification, reversal or establishment of new law. Moreover, Respondent failed to make specific denials of the factual contentions that in any case is not warranted by evidence.” In his Motion to Strike, Petitioner also asks this Court to strike Respondent’s Answer on the grounds that it does not provide a legal answer to claims 5, 6 and 7 raised in his Petition.

Given that Petitioner's case is relatively "new" in that it was filed on February 28, 2006, this Court has not yet had the opportunity to thoroughly review Petitioner's Petition or Respondent's Motion for Summary Judgement. This Court has however, had the opportunity to conduct a

preliminary review of Respondent's Answer and Motion for Summary Judgment and takes judicial notice that the State's response takes the form of a typical standard response which this Court finds is by and large responsive. Additionally, when this Court is able to issue an Order addressing Petitioner's Petition and Respondent's Motion for Summary Judgment, if the Court is in need of further briefing, the Court will issue an order directing it at that time. Moreover, Petitioner filed a response in opposition to the State's Motion for Summary Judgment which is an appropriate vehicle in which to voice his objections to the State's motion. In the meantime, this Court declines Petitioner's request to issue sanctions against the Respondent or to strike the State's Answer. Petitioner's Motion for Sanctions (Document No. 27) is DENIED and Petitioner's Motion to Strike (Document No. 22) is DENIED..

IT IS HEREBY ORDERED that Plaintiff's Motion for Sanctions (Document No. 27) is DENIED and Petitioner's Motion to Strike (Document No. 22) is DENIED..

SO ORDERED.

Signed: July 23, 2006



Graham C. Mullen
United States District Judge

